

STATE OF MICHIGAN
COURT OF APPEALS

JAMES ZBORIL,

Plaintiff-Appellant/Cross-Appellee,

v

GERALDINE FARKUS,

Defendant-Appellee/Cross-
Appellant.

UNPUBLISHED

March 1, 2005

No. 250760

Oakland Circuit Court

LC No. 1996-535946-CK

Before: Zahra, P.J., and Neff and Cooper, JJ.

COOPER, J. (*concurring in part and dissenting in part*).

I agree with the majority opinion that defendant was not entitled to sanctions and costs. However, I respectfully disagree with the majority opinion finding that the trial court erred in granting defendant's motion for summary disposition based on the wrongful conduct rule.

As the majority opinion states, a plaintiff's claims are barred by the wrongful conduct rule if they are based on conduct that is "prohibited or almost entirely prohibited under a penal or criminal statute."¹ Pursuant to the Michigan Business Corporations Act, "a person who knowingly makes or files or a person who knowingly assists in the making or filing of a false or fraudulent" stock certificate is guilty of a misdemeanor.² Patterson Dental was entitled to restrict the sale of the discounted stocks to its employees.³ Both plaintiff and defendant knew that only defendant, as an employee of Patterson Dental, could purchase the discounted stock in her name. Regardless of this knowledge, plaintiff claims that he gave defendant money to purchase stock on his behalf. This admission clearly reveals his intent to knowingly assist in the making of a false or fraudulent stock certificate; i.e., one bearing the name of a false shareholder. As this conduct amounts to a misdemeanor, the trial court properly dismissed his claims against defendant.

¹ *Orzel v Scott Drug Co*, 449 Mich 550, 561; 537 NW2d 208 (1995).

² MCL 450.1932(1).

³ MCL 450.1342a; MCL 450.1473(d).

I agree with the trial court, however, that defendant was not entitled to sanctions and costs for the filing of this frivolous claim. Under the wrongful conduct rule, one wrongdoer may not be afforded relief at the expense of another.⁴ As defendant equally participated in the creation of a false stock certificate, she cannot be rewarded by sanctions and costs payable by plaintiff. Accordingly, I would affirm the trial court's orders.

/s/ Jessica R. Cooper

⁴ *Orzel, supra* at 213 n 11.